

REMARKS

Reconsideration and withdrawal of the rejection of the application are respectfully requested in view of the amendments and remarks made herein, which place the application in condition for allowance.

Applicant notes with appreciation the Examiner's finding that the present invention is novel over the cited prior art.

Status of claims and formal matters

Claims 1 and 3-5 are pending in this application. Claim 2 has been cancelled. Non-elected claims 6-12 have been cancelled without prejudice and claim 1 has been amended. Support for the amendments made to claim 1 is found on page 4, lines 37-38 of the specification as originally filed. No new matter has been added by this amendment.

It is submitted that the claims as amended, herewith are patentably distinct over the prior art in the Official Action, and these claims are in full compliance with the requirements of 35 USC §112.

Response to claim objections and rejections - 35 USC §103(a) :

Claims 1 and 3-5 are rejected under §103(a) as allegedly being unpatentable over HARTIGAN et al. in view of CHERUKURI et al. 4,317,838. This rejection is respectfully traversed.

The present invention relates to a coating process of sugarless boiled sweets wherein the coating syrup comprises from 5 to 70% by weight of at least one polyol, at least one high molecular weight polysaccharide, 10-40% by weight of at least one fat and at least one silicate (claim 1). The process of the invention is based on the selection of a specific composition of a coating syrup which avoids the formation of crystals which impair the translucence of the coating.

In HARTIGAN et al., the coating layer which is based on a combination of microcrystalline cellulose and gum (MCC-GUM) is formed by **crystallization** (column 3 lines 37-44).

In CHERUKURI et al., the coating syrup which is based on sorbitol in the crystalline form is also formed by crystallization (column 1, lines 9-11). As a matter of fact, the **crystallization** of the coating layer of CHERUKURI et al. is initiated by seeding of a dusting mix (column 2, lines 60-61).

Thus, the entire coating process of both CHERUKURI et al. and HARTIGAN et al. involves crystallization that leads to the formation of an opaque coating.

Contrary to the above-cited prior art, the process of the invention precludes crystallization (claim 1). Due to the absence of crystallization, the process of the present invention allows the syrup to cool down and harden to form a hard and translucent coating that keeps its translucent appearance over time.

Said absence of crystallization is due to the specific solution of the coating syrup composition. As emphasized in the specification, applicant has surprisingly and unexpectedly that, **"the coating syrup advantageously comprises at least 5 % by weight of the said polyol, and at most 70 % by weight. Above this content, undesirable crystallization phenomena are indeed observed, which mean that the coating becomes opaque"** (page 10, lines 8-14 of the present specification). As exemplified in the specification, the specific composition of the coating syrup of the invention is therefore crucial to obtain sugarless boiled sweets **that remain translucent over time (Example 1, page 13 lines 10-11)**.

Due to the specific coating composition, crystallization phenomena are avoided, the coating process of the present invention produces a hard and translucent coating that has the advantages of avoiding moisture regain and **loss of the translucent appearance over time** and, thus precludes the boiled sweets from becoming sticky or opaque, respectively (page 5, lines 9-17 of the present specification).

Furthermore, CHERUKURI et al. and HARTIGAN et al. do not suggest the claimed invention, as they **never** address the issue of forming a non-crystallized hard and transparent coating.

Accordingly, the prior art is not relevant to assess the obviousness of the coating process according to the invention. The Examiner is respectfully reminded of case law;

namely, that there must be some prior art teaching which should provide the necessary incentive or motivation for modifying the reference teaching. *In re Laskowski*, 12 USPQ2d 1397, 1399 (Fed. Cir. 1989); *In re Obukowitz*, 27 USPQ2d 1063 (BOPAI 1993).

In view of the foregoing, applicant has respectfully pointed out that none of the cited prior art documents, taken alone or in combination, offers any incentive to use the specific coating syrup of the invention in order to generate a hard and translucent coating that keeps the appearance of translucence over time. The resulting coating allows the non-sticky coated boiled sweets to be marketed without individual wrapping.

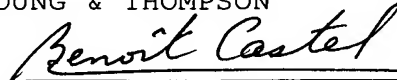
The instant claims thus do not contravene 35 USC §103(a).

Consequently, reconsideration and withdrawal of this rejection is respectfully requested.

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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